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United States

Plaintiff

VS

Lamont C. Johnson

defendant

Emergency motion for reducing sentence or modifying Judgement under 18 U.S.C. § 3582 (c)(1)(A)(i) expedited ruling requested due to Covid-19 pandemic

Lamont C. Johnson is serving a 42 month sentence for a plea for felony and Possession of a firearm (42 months). Defendant argues he served 2 years (24 months) from Jan. 10, 2019 till now which is Jan. 16, 2021 but only receiving (12 months) of sentence and is scheduled to be release 8.22 (Aug. 2022). However not only has the Covid-19 pandemic in Marion increased but He also has tested Positive on Dec. 3, 2020 and Suffers from Chest pain, headaches, loss of appetite, smell and taste still to this day and just recently loss his Grandpa (Clifton Johnson Nov. 20) and Granny (Barbra Brock Dec. 20) due to Covid-19 and argues that the Continuously lock-down due to Covid-19 has only made his mental Condition worst. He also has a 7 year old son that needs his father in his life.

Furthermore movant claims his as well as alot of others exposures could have been prevented. Defendant argues he witnessed numerous of staff not wearing mask, experienced mixtur of quarantine due to lack of space, Triple men cells, declined access to hygier. Forced to utilize Communal showers after positive inmates when "was Negative" as well eat from trays which positive inmates did as well and numerous of other illegal conditions which gose against CDC Guidelines. Jan. 9, 2020 movant was sentence to 42 months in B.O.P. However while in Custody at Marion Corr facility Johnson not only experience a pandemic outbreak of Covid-19, but he also tested positive due

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a mismanaged move which shows Facility is not doing the best to protect inmates. Records show that Marion is number 3 of Worst Prisons with outbreaks (Covid-19)

Analysis

- A. Compassionate release - Before the first step act the Compassionate release statute empowers courts to reduce a defendant's sentence whenever "extraordinary and compelling reasons warrant such a reduction" The statute was first enacted as part of the Comprehensive Crime Control Act of 1984 to serve as a "Safety Valve" to enable Judges to reassess whether a sentence reduction was warranted by factors previously addressed through the abolished Parole System. The act left the Sentencing Commission to define what constituted "extraordinary and compelling reasons" which it defined as including medical conditions, family circumstances, and other reasons.

Although Congress again changed the Sentencing Commission with defining what "extraordinary and compelling reason would be". The most recent version of the Sentencing Commission Guidelines Manual (Nov. 2018) predated the first step act. There the Commission enumerated three specific reasons that qualify as extraordinary and compelling: (A) terminal illness diagnosis or serious medical, physical or mental impairments from which a defendant's capacity for self care in prison; (B) health ~~two~~ family related circumstance death/incapacitation of the only caregiver for the inmate's child or (ii) incapacitation of inmate's spouse - if the inmate is the spouse's only caregiver. The guideline also includes a catch all provision (C) that gave the "director of the B.O.P. the authority to determine if "there exists in the defendant's case an extraordinary and compelling reason other than or in

Combination with the other Categories with the legislative history in mind and without current guidance from the sentence Commission many courts have found. U.S.A. vs Carter NO. 16-Cr-156 at XCPD June. 10. 2020 granting sentence reduction (served 48 months of 80 month sentence tested positive) No other health issues and nothing was at heightened risk of developing serious complications should he be exposed again.

Others have granted Compassionate release even when the defendant has no underlying health conditions and has not contracted the virus - simply due to current conditions within the bureau of Prisons and lack of quality programming some have defined "other reasons" to include defendants.

- B. "Inmate will be able to move effectively to avoid contracting Covid-19 and get better treatment on home confinement" U.S.A. vs Brown NO 2:18-Cr-366 Ecf NO. 35, 35 C.M.D. Ala May 22, 2020) U.S.A. vs Arreola-Bretado Case NO 3:19-Cr-3410, Ecf NO. 50 C.S.D. Cal May 15, 2020 granting motion to defendant who tested positive after concluding she will receive better medical treatment on home confinement) U.S.A. vs Fischman, 16-Cr-00246-HSG-1, Ecf NO. 76 C.M.D. Cal May 1, 2020) granting motion to defendant who tested positive) U.S.A. vs Huntly NO 13-Cr-119-ABJ, Ecf NO 263, at 8n 9.10 C.D. DC May 2020) granting motion to defendant who tested positive) U.S.A. vs Jacobs NO. 19-Cr-1249, Ecf NO 84 C.S.D. I 9 July. 2. 2020) defendant tested positive and has been treated with tylenol continue to test positive a month later is granted 35822) U.S.A. vs Plank NO. 17-Cr-20026 at * 5-6 C.D. Kan. July. 2. 2020) noting despite the B.O.P measures over one third of Population has been
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infected and finds that despite being Covid-19 positive the risk to defendants remains as it has not been established that a person becomes completely immune to the virus after infected see e.g. U.S.A vs Rangel 3:19-cr-00071-sib Ecf No 54 (D. Ala July. 10. 2020). Gleason J granting compassionate release due to Covid-19 pandemic without specific reference to conditions there, and fact that defendant could not be considered for. The court should view the 2018 Guidelines as persuasive but not binding, this court should then exercise its discretion. To hold that the current pandemic and health risk and or mental risks it poses to prisoners in general and to Johnson in particular alone with the fact he is unable to seek help for his drug addiction due to Covid-19 pandemic being the reason of incomplete program, as well as the fact he tested positive for Covid-19 and has yet to recover and the risk to defendants remain as it has not been established that a person becomes completely immune to the virus after infected and or how worst the second wave would be and the fact that he is remorseful for his crime(s) and admits to his wrong. All the reason above from extraordinary and compelling reason to grant compassionate release and release defendant to halfway house or home confinement. See also U.S.A vs Garcia-Zuniga, 2020 WL 340 3070 (S.D Cal June. 19. 2020) granting motion to defendant due to the fact she could not be considered for programming.

- C. The Covid-19 pandemic is an extraordinary and compelling reason to grant a sentence reduction. Records from massive outbreaks at Marion USP will prove that not only is his and the rest of the compound's 8th Amendment is being violated, but it will

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also prove the facility is not doing it's best job to protect inmates. In fact his exposure could have been prevented if moves were managed properly and or staff wore there masks. He also argues the fact he was forced to cell with inmates before he was positive and utilize showers after positives inmates see *E. G. Ross vs Blake* 136 sct 1850, 1855 (2016) *Singh vs Ashcroft*, 362 F.3d 1164, 1169 9th cir 2004 cit is Axiomatic that one need not exhaust administrative remedies that would be futile impossible to exhaust see Timothy Williams, et al Coronavirus cases rise sharply in Prison's June. 16. 2020 available at <https://www.nytimes.com/2020/06/16/us/politics/coronavirus-prisons.html> Coronavirus. also see how much Covid-19 positive increased at Marion Crr.

- D. Compassionate release is appropriate because Johnson heightened risks of mental and or medical conditions. According to Johnson he has become stressed prior to Covid-19. However the Covid-19 Pandemic has increased at uspr Marion crr and Movant states he has been locked in a three man cell for 23^{hrs} a day from as early as Apr. 1. 2020 due to Covid-19. This Cruel and unusual punishment is enough to prove the mental outbreaks he's experienced. Not only does he complain to psychology of the symptoms he's experienced, but states that due to Covid-19 he is unable to receive the proper treatment. Furthermore since testing positive he still suffers from headaches, chest pains, loss of appetite, smell and taste. With Movant catching Covid-19 in facility he does have a pre-existing condition that No doctors knows the long term affects (Covid-19). These should be demonstrated as extraordinary and compelling reasons warranting Compassionate release due (Sof 7).

to the unique risk that Covid-19 terminal illness diagnoses or serious medical, physical or mental impairments from which a defendant unlikely to recover care in prison. Why asked why he has been unable to receive medication or psychology for his mental issues.

E. Compassionate release is appropriate because Johnson is in need of drug programming as well as the other programs to seek help for release. However Johnson argues due to Covid-19 Pandemic he is unable to seek benefits or knowledge from programming. According to Johnson he does want to receive help for his drug addiction, as well as seek benefits from job search, write a resume and or other programs. He argues that he is likely to benefit more from being released on home confinement and or check into a outpatient program.

F. The applicable §3553 sentence factors favor release Johnson committed crime(s) for which he has been punished severely. He also is remorseful and now understands his wrongs and willing to make it right to raise his 7 year old son. If request is granted would result in him serving an additional amount of time on supervised release and or months of confinement. Both subject to strict conditions for which he could impose should he violate them. A hardly insignificant sentence, comming Johnson sentence to Home confinement will still result in significant punishment, reflect the seriousness of the offense, and promise to respect the law.

Conclusion

The Covid-19 Pandemic and the increased risk the virus poses to inmates in general and Johnson in particular is an extraordinary and Compelling reason to grant motion, so the disproportionate policy of the Bureau of Prison's implies towards Movant's sentence, as well as the fact he not only tested positive for Covid-19, but he also is unable to receive the proper treatment he seeks, so is the fact his 5th Amendment has been violated due to the cruel and unusual punishment he has experienced from mismanaged moves, lack of "medical Attention", staff not wearing there masks etc, Because release is also appropriate in light of the applicable 3553 sentence factors, this Court should reduce his sentence to time served, leaving the supervised release portion of his judgment untouched or release defendant on Home Confinement

Date Jan. 18, 2021

Lamont C. Johnson
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